IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 8TH FEBRUARY 2007 / 19TH MAGHA 1928

WP(C).No. 17930 of 2003(H)

PETITIONER:

C.R.GOPI S/O. RAMAN EZHUTHASSAN,
CHITTATHUPARAMBIL HOUSE, MULAYAM DESAM,
KAINOOR VILLAGE, THRISSUR DISTRICT.

BY ADV. SRIP.G.SURESH

RESPONDENTS:
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1. THE WILD LIFE WARDEN, PEECHI,
THRISSUR DISTRICT.

2. THE DEPUTY RANGER, FOREST STATION,
MANNAMANGALAM, THRISSUR DISTRICT.

3. DEPUTY THASILDAR (RR), THRISSUR TALUK,
THRISSUR DISTRICT, THRISSUR.

ADDL. RESPONDENT:

4. THE MANAGER, DHANALAKSHMY BANK,
PUTHUR BRANCH, THRISSUR DISTRICT.

(ADDL. R4 IS IMPLEADED AS PER ORDER DT.11.6.2003
IN I.A. NO.3630/2003.)

R1 TO 3 BY GOVERNMENT PLEADER SMT.SMITHA
R4 BY ADV. SRI.P.JACOB VARGHESE,SC,DHANALAKSHI BAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/02/2007, THE COURT ON 08/02/2007 DELIVERED THE FOLLOWING:

ORDER IN I.A. NO.3630/2003 IN W.P.(C) NO.17930/2003

DISMISSED:

8.2.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE ORDER IN O.P. 13923/98 OF THIS HON'BLE COURT.

P2: TRUE COPY OF RECOVERY NOTICE DT.9.1.2003.

P3: .DO. DT.28.4.2003.

P4: .DO. R.R. NOTICE DT.28.5.2003.

RESPONDENTS' EXHIBITS:

ANNEXURE R1(a): BANK GUARANTEE FOR RS.73,000/- OF DHANALAKSHMI BANK, PUTHUR BRANCH VALID TILL 30.10.99.

R1(b): AGREEMENT EXECUTED BY PETITIONER ON 2.11.98.

R1(c): LETTER DT.26.9.99 TO THE MANAGER, DHANALAKSHMI BANK LTD., PUTHUR BRACH FROM THE WILDLIFE WARDEN PEECHI.

R1(d): LETTER DT.26.10.99 FROM THE WILD LIFE WARDEN PEECHI TO THE PETITIONER.

R1(e): BANK GUARANTEE VALID TILL 9.3.2001 DT.10.3.2000.

R1(f): LETTER DT.7.3.01 FROM THE WILD LIFE WARDEN, PEECHI TO THE MANAGER, DHANALAKSHMI BANK LTD., PUTHUR BRANCH.

R1(g): LETTER DT.7.3.2001 FROM THE WILDLIFE WARDEN, PEECHI TO THE PETITIONER.

R1(h): BANK GUARANTEE RENEWED BY THE FEDERAL BANK ON 2.8.02.

R1(i): LETTER DT.23.8.2001 FROM THE MANAGER, DHANALAKSHMI BANK, PUTHUR BRANCH.

R1(j): LETTER DT.26.10.02 FROM THE WILD LIFE WARDEN, PEECHI TO THE MANAGER, DHANALAKSHMI BANK, PUTHUR BRANCH.

R1(k): LETTER DT.8.11.02 FROM THE MANAGER, DHANALAKSHMI BANK LTD., PUTHUR BRANCH TO THE WILDLIFE WARDEN, PEECHI.

R1(l): COMPARISON MAHAZAR.

R1(m): LETTER DT.11.9.02 FROM THE ASST. EXECUTIVE ENGINEER, CHALAKUDY.

R1(n): ORDER DT.26.11.02 OF THE WILDLIFE WARDEN, PEECHI.

R1(o): ORDER DT.2.12.02 .DO.

R1(p): LETTER DT.28.4.03 TO THE DISTRICT COLLECTOR, THRISSUR FROM THE WILDLIFE WARDEN, PEECHI.

R1(q): DEMAND NOTICE ISSUED BY THE TAHSILDAR(RR), THRISSUR.

ANNEXURE A: TRUE COPY OF APPLICATION FOR BANK GUARANTEE DT.10.3.2000.

ANNEXURE B: TRUE COPY OF BANK GUARANTEE.

ANNEXURE C: TRUE COPY OF LETTER DT.26.10.99 BY THE WILDLIFE WARDEN TO GOPI.

ANNEXURE D: TRUE COPY OF LETTER DT.7.3.01 SENT BY WILDLIFE WARDEN RECEIVED ON 9.3.01.

ANNEXURE E: TRUE COPY OF LETTER TO GOPI BY WILDLIFE WARDEN.

ANNEXURE F: TRUE COPY OF LETTER DT.23.8.01 BY THE BANK TO THE WILDLIFE WARDEN.

ANNEXURE G: .DO. .DO.

ANNEXURE H: .DO. DT.26.10.02 BY THE WARDEN TO THE BANK.

ANNEXURE I: TRUE COPY OF REPLY DT.8.11.02 BY THE BANK.

TRUE COPY

P.S. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.17930 of 2003

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Dated this the 8th day of February, 2007.

JUDGMENT

The W.P. is filed challenging recovery proceedings for recovery of differential cost of Rs.53,000/- from the petitioner. Petitioner's vehicle was involved in a forest offence and the same was seized pending confiscatoin proceedings. However, the vehicle was released under interim orders of this court on furnishing Bank Guarantee. Even though the Bank Guarantee was furnished, the Dhanalakshmi Bank, Puthur Branch released the Bank Guarantee to the petitioner without consent from the respondents. The Bank Manager was directed to file an affidavit and he has justified his action saying that demand was not raised and instead the Wild Life Warden concerned requested renewal of Bank Guarantee which could be done only on application by the person on whose behalf Bank Guarantee was furnished by the Bank. Obviously there are lapses on the part of the Department because if renewed Bank Guarantee was not furnished before expiry of the Bank Guarantee, it was the duty of the Wild Life Warden to demand payment under the original guarantee. Therefore, if the differential amount is not recovered from the petitioner, it is for the Department to

recover from the official concerned who allowed the Bank Guarantee to expire. Similarly, the action of the Bank in releasing the Bank Guarantee without Department surrendering the original is improper, though technically or legally he may be right because Bank Guarantee was for a duration. In the normal course Banks should not exonerate themselves from liability without surrender of original. In the circumstances, it is upto the Department to consider blacklisting of the Bank from Government business so that such instances do not repeat in future. The W.P. is accordingly dismissed leaving freedom to the respondents to proceed for recovery from the petitioner, failing which there will be direction to the Government to recover the amount from the Wild Life Warden concerned who did not demand payment from the Bank on failure to renew the Bank Guarantee.

C.N.RAMACHANDRAN NAIR
Judge

pms